

**Department of Health and Human Services
Fiscal Year 2012**

**Contingency Staffing Plan for Operations in the
Absence of Enacted Annual Appropriations**

Summary Data

The attached reflects HHS's contingency plan for agency operations in the absence of appropriations. Note that the Food and Drug Administration (FDA) will maintain full staffing levels consistent with enactment of their FY2012 appropriation (P.L. 112-55). The HHS contingency plan would lead to furloughing 36,023 staff and retaining 40,630 staff (including FDA's full staffing level of 13,898 personnel), as of day two of a near-term funding hiatus. Put another way, including FDA staff, 53% of all HHS staff would be retained and 47% would be furloughed. In terms of just the staff in HHS agencies that would be impacted by a lapse in appropriations (i.e., not including FDA), 43% would be retained and 57% would be furloughed. These percentages vary among HHS' agencies and offices, with grant-making and employee-intensive agencies (e.g., the Administration for Children and Families (ACF), the Substance Abuse and Mental Health Services Administration (SAMSHA), and the Agency for Healthcare Research and Quality) having the vast majority of their staff on furlough, and agencies with a substantial direct service component (e.g., the Indian Health Service) having most of their staff retained.

Summary of Activities to Remain Open (excluding FDA) and to be Closed

Consistent with legal advice that activities authorized by law, including those that do not rely on annual appropriations, and activities that involve the safety of human life and protection of property are to be continued, some of the HHS activities that would *continue* include:

- Indian Health Service (IHS) – IHS would continue to provide direct clinical services and referrals for contracted services that cannot be provided through IHS clinics.
- Health Resources and Services Administration (HRSA) – Health Centers would continue to provide health services, as grantees would be able to draw down funds that have already been awarded and mandatory funding would remain available.
- Administration for Children and Families (ACF) – ACF programs funded through mandatory sources with full year appropriations would continue operations, including Temporary Assistance for Needy Families (TANF) and Abstinence Education. ACF would also continue operating the Unaccompanied Alien Children program, and States would have adequate funding to continue Foster Care, Adoption Assistance, and Child Support Enforcement for a period.
- Administration on Aging (AOA) – Federal staff would continue to support the operation of Aging and Disability Resource Centers and the Senior Medicare Patrol program, as mandatory funding would remain available for these programs.
- Substance Abuse and Mental Health Services Administration (SAMHSA) – Federal staff that is authorized to continue working under a funding hiatus would continue to support the operation of the national Suicide Prevention Hotline.
- Assistant Secretary for Preparedness and Response (ASPR) – There would be sufficient ASPR staff to maintain situational awareness of existing public health emergencies,

interact with other response agencies across the Federal government (e.g., FEMA), and maintain a minimal readiness level for response operations.

- National Institutes of Health (NIH) – The NIH Clinical Center would continue to provide direct medical services and maintain research protocols for *current* patients.
- Centers for Disease Control and Prevention (CDC) – CDC would continue to implement global health programs abroad, such as the President's Emergency Plan for AIDS Relief funded through prior year appropriations.
- Agency for Healthcare Research and Quality (AHRQ) – In general, research would continue to implement the provisions of the child health quality initiatives mandated and funded by the Children's Health Insurance Program Reauthorization Act of 2009, which is funded through a reimbursable agreement with CMS.
- Centers for Medicare and Medicaid Services (CMS) – Operations of the Center for Consumer Information and Insurance Oversight would continue as funding was provided through the Affordable Care Act. This includes insurance rate reviews, assessment of a portion of insurance premiums that are used on medical services, establishment of exchanges, operation of the pre-existing condition insurance program and the early retiree reinsurance program.

Activities that would *not continue* include:

- IHS – Routine environmental health inspections and facilities maintenance and repair would be discontinued.
- HRSA – No new service grants (e.g., to Ryan White HIV/AIDS grantees) would be awarded with annual appropriations.
- ACF – No new service grants (e.g., for Head Start) would be awarded with annual appropriations.
- AoA – No new grants for services for older adults would be awarded.
- NIH – The NIH Clinical Center would not admit any new patients or initiate any new clinical trials during a hiatus in funding. NIH would not make any extramural research grants or contracts.
- CDC – Federal staff would not be available to support grants or intramural activities associated with a variety of activities, such as the Chronic Disease Prevention and Health Promotion programs.
- AHRQ – AHRQ would not be able to fund any new grants, or non-competing grants, which support a broad portfolio of research on healthcare quality, effectiveness, and efficiency.
- SAMHSA – No new grants for behavioral health services would be awarded.
- CMS – Health care fraud and abuse strike force teams funded from discretionary funds would have to end their operations.

Methodology

The HHS contingency staffing plan for agency operations in the absence of appropriations has been updated consistent with the requirements in Section 124 of OMB Circular A-11. The plan was prepared based on the DOJ legal opinions of April 25, 1980, January 16, 1981, and August 16, 1995, and the memoranda and Q's and A's that OMB provided to Departments and Agencies in 1995, 1996, and April 2011 on this topic. To the degree that updated government-wide guidance is released, or there are events that affect the programmatic activities that HHS needs to

carry out during an absence of annual appropriations, the plan would require additional updating. In cases of public health disasters at home or abroad that demand the attention of a range of agency experts to secure and protect human life, our plan would also have to be modified. For example, the 2011 earthquake and tsunami and resulting destabilization of nuclear facilities in Japan has called upon experts within CDC and other HHS agencies to provide guidance and other assistance to protect human life.

This plan reflects the anticipated number of staff who would be on-board the second business day of a near-term funding hiatus, after initial shutdown activities would have been completed. On the first day, HHS expects to complete initial shutdown activities within the first four hours after OMB notification to implement the contingency plans. The plan is updated for staffing levels and funding levels in FY2012.

As in previous periods without enacted annual appropriations, the number of excepted staff would vary daily, depending on the amount of excepted work that needs to be done. For example, at the end of a pay period, time keepers would need to be excepted for the amount of time to prepare and enter into the timekeeping system the hours worked in pay status, hours worked in non-pay status, and hours in furlough status. Also, the second-day staffing level is likely to include more contract officers than some later days, as contract officers must complete their notifications of those contractors whose performance would need to be changed.

The information on staff who would not be furloughed is broken into the two broad categories of “authorized by law” and “safety of human life and protection of property,” consistent with Department of Justice legal opinions.

“Authorized by law” includes:

- Staff performing activities without funding issues – these staff would be working in a pay status, as funding would continue to be available to pay their salaries.
- Officers appointed by the President –This includes all PAS and PA Officials.
- Staff performing activities authorized by necessary implication.

For activities related to the safety of human life and the protection of property, HHS relied on the guidance provided by the Attorney General in 1980, as modified by the Department of Justice in 1995 to reflect relevant statutory changes in the intervening years.

For safety of human life, the numbers needed to continue medical services that HHS provides are broken out from the total. For protection of property, the plan provides separate information on the number of staff excepted to protect on-going medical experiments, to maintain computer data, and to maintain animals and protect inanimate government property.

The HHS contingency staffing plan for agency operations in the absence of appropriations includes 15,638 staff that would be excepted for the safety of human life and protection of property. A-11 requires legal and policy statements supporting a plan if it exceeds 5 percent of the staff not otherwise authorized by law to be excepted – which would be 2,583 in the case of HHS. The total in this plan exceeds that threshold by about 13,055. This higher number includes:

- Direct medical services (and support operations): 12,359, mostly in IHS and NIH.
- Maintenance of the value of on-going medical experiments: 1,076 of whom 982 are in NIH.

These two areas total 13,435 and constitute more than the difference between the 5% threshold and the HHS total. These exceptions have been reviewed by both the Office of the General Counsel and HHS leadership, and found to be appropriate from both a legal and policy perspective.

HHS will maintain the Payment Management System in an operational status to continue processing grant drawdown requests, so that payments can be made for excepted programs. Many grantees receiving annually appropriated awards prior to a shutdown may also be able to continue drawing funds from prior awards during an appropriations hiatus. Such grantees could not drawdown funds if they were under a restriction that required Federal staff to take a specific action for a drawdown to occur. The robust internal controls that currently exist would continue to ensure the integrity of grant draw-down requests and payments.

HHS will maintain Grants.gov in an operational status to continue to post funding opportunity announcements and accept and process grant applications for fully funded and excepted programs, and to accept and store applications for non-excepted programs. This will allow the government to remain responsive to prospective grantees eligible for financial assistance from excepted programs while adhering to requirements for operating in the absence of annual appropriations.

Summary by Category of Exception

The sections on the attached table display the staff who would be exempted according to which category their funding falls or the activities they fulfill. This section summarizes the highlights of those totals across HHS.

Staff performing activities without funding issues

Several HHS agencies have substantial mandatory, carryover, or user fee funds which are not affected by a hiatus in annual appropriations, with CMS having the most mandatory funds, including State Grants and Demos, ACA Mandatory Program Management, ARRA Mandatory Program Management, Center for Medicare and Medicaid Innovation, CMS ACA Implementation Fund, HCFAC mandatory, etc. CDC has a good number of staff supported through carryover funding, including for PEPFAR, and the Strategic National Stockpile, and The James Zadroga 9/11 Health and Compensation Act of 2010 includes mandatory administrative funding for the World Trade Center program. IHS has the most reimbursable activities, which includes collections from third-party billing for health services, including from private insurance, Medicaid, and Medicare.

The Officers appointed by the President at HHS include the Secretary, Deputy Secretary, Assistant Secretaries, and many agency heads. At HHS, the total on board and retained under a funding hiatus is 21. Including the agency head for FDA, the total on board is 22.

Staff performing activities authorized by necessary implication – support of funded activities

The HHS plan includes 1,063 staff performing activities authorized by necessary implication,

other than law enforcement and orderly shutdown. The largest components of this are CDC and the Program Support Center (PSC).

CDC – 413 staff would be carrying out excepted activities to support both domestic and international operations in foreign countries with a CDC presence, such as travel, procurement, grants, finance, and payment services. Fully funded programs include: PEPFAR, Strategic National Stockpile, World Trade Center, International Malaria, Haiti cholera response, and some of CDC's reimbursable activities.

Program Support Center – 191 staff would be authorized by necessary implication. These include, but are not limited to:

- Acquisition services for those HHS programs which have funding (as well as any safety/property excepted contracts).
- Repackaging of medical supplies and pharmaceuticals for clinics and hospitals providing direct medical services;
- Maintaining the automated systems and help desks necessary to support funded and other excepted programs (accounting services, Gov-Trip, procurement systems, HHS' Payment Management System (PMS), time-keeping, accounting for pay, etc.).

Staff performing activities authorized by necessary implication – orderly phase-down and suspension of operations

HHS has identified 820 staff (roughly one percent of the Department) that would be excepted to assure an orderly phase-down and suspension of activities. This includes staff that would be needed to assure an orderly process for determining, as conditions change, what activities should be re-initiated and what activities may no longer be excepted. This number also includes non-PAS shutdown staff carrying out responsibilities described in the November 17, 1995 OMB memorandum to the President's Management Council on PAS shutdown responsibilities, and the estimated number of OGC staff who would be excepted to assure that HHS responds appropriately to orders from the Judicial branch.

Safety of human life – direct medical services

HHS estimates that 12,359 staff would be excepted for the provision of direct medical services, with the vast majority of these in the Indian Health Service and the NIH Clinical Center.

Indian Health Service – 9,709 IHS staff would be excepted for the provision of direct medical care. This reflects FTE at all of the IHS service unit facilities, where direct health care is provided. The contingency plan provides for health care to continue at all of these locations. While some preventive health services would continue to be provided (e.g., well child exams or prenatal visits), the predominant care provided would be treatment services for acute conditions or monitoring of chronic diseases for complications. The IHS annual appropriation is not large enough to provide the level of medical services that, for example, Federal employees receive through FEHB. IHS already defers needed medical services. In addition, most IHS facilities are in remote locations, where there are few if any other providers. As a result of these factors, IHS does not anticipate further reducing the number of inpatient/outpatient visits during a hiatus.

National Institutes of Health -- 2,564 staff would be excepted for the provision of patient care. In general, individuals enroll in inpatient and outpatient investigational procedures at the NIH Clinical Center only when standard medical treatments have failed, and other treatment options are not available. As a result, they have no other alternatives. While NIH would not be accepting new patients or initiating new clinical protocols during a hiatus, the continued provision of care to existing patients (both inpatients and outpatients) means the hospital would be operating at roughly 90% of normal patient load during the initial weeks of a funding hiatus. These staff comprise the multidisciplinary patient care team needed for safe and effective patient care, including direct patient care and patient support. NIH also plans to retain a small group of staff to support direct medical care staff. These staff will perform critical functions such as the monitoring of protocols and regulatory adverse effect report functions, and the distribution of drugs to clinics.

Protection of property -- research property, animals, and inanimate property

NIH – 982 staff would be excepted to protect property related to on-going medical experiments, and 652 staff would be needed for maintenance of animals and protection of inanimate government property. The 982 excepted to protect property related to on-going medical experiment is a subset of the over 8,000 people that work in 1,140 intramural research laboratories and clinical branches. For some of the on-going experiments, a break in the protocol would render the research property (both animate and inanimate) useless and require some of it to be destroyed. These staff would also be responsible for maintaining cell lines and other invaluable research materials.

It should be noted that NIH staff provide continuous utilities, facilities surveillance and maintenance, fire protection, and support a host of other critical systems. These functions protect the 281 government buildings, comprising 15 million square feet worth \$15 billion, as well as 45 leased facilities, constituting over 4 million rentable square feet. In addition to supporting patient care activities, NIH also provides utilities and buildings surveillance for laboratory and vivarium facilities housing 1,438,000 mice; 122,000 fish, 66,000 rats and 3,500 nonhuman primates. These animals are used for research by 24 NIH Institutes and Centers at multiple facilities across the country; many of these animals are priceless and have taken generations to breed. NIH also plans to retain staff responsible for the proper maintenance, calibration, and usage of specialized medical equipment (e.g., infusion pumps, medication administration, pharmacokinetics, medical gas, anesthesia pumps, etc.). These staff include technologists, chemists, pharmacists, and biomedical engineers.

Protection of property -- maintenance of computer data

HHS estimates that 369 staff (excluding those otherwise authorized by law) would be excepted for the protection of computer data, with the majority of these at NIH.

NIH – 235 staff would be excepted to maintain computerized systems to support research and clinical patient care. The majority of retained individuals would be for the maintenance of the hospital data network, clinical research information system, picture archiving and communications systems, radiology information system, and other components directly related to the electronic patient medical record (e.g., patient care unit workstations on wheels and bar coding devices). Additional retained employees would be necessary to curate concurrent toxicologic data from external contractor sites requiring sophisticated data-handling expertise to

prevent corruption of data streams, as well as to ensure the integrity of experimental data systems.

The plan for maintaining access to databases includes the minimum staff required to identify and correct dynamic access problems caused by changes in the volume and types of *use*. (During a shutdown, there would be no routine updating of databases that is normally a major part of these database operations.) In addition, the plan for continuation of IT infrastructure services represents only the bare minimum to sustain the essential infrastructure for keeping the NLM data center operational for serving the external biomedical databases that are used in the provision of non-Federal health care.

Attachment